



COURT OF MAGISTRATES (MALTA) AS A COURT OF CRIMINAL JUDICATURE

**MAGISTRATE
DR. JOSEPH GATT LL.D.**

Hearing of the 27th of October, 2023

Case Number: 28/2022

**The Police
(Inspector Stacy Gatt)**

vs

Maurizio D'Apice (ID Number 0054490A)

The Court;

Having seen the charges brought against the accused Maurizio D'Apice, 37 years old, born in Monza, Italy and resident at 'Santa Maria Court', Flt 4, Triq Alfred Craig, Pieta', being:

Akkuzat talli b'diversi atti, ukoll fi zminijiet differenti li jiksru l-istess dispożizzjoni tal-ligi u li ġew magħmula b'risoluzzjoni waħda, dawn l-atti jitqiesu bħala reat wiehed, imsejjah reat kontinwat bħala sid-il-kera jew amministratur tal-fond 'Santa Maria Court', Flat 4, Triq Alfred Craig, Pieta' nhar it-28 ta' Settembru 2020 u fil-gimghat u x-xhur precedenti;

1. Bħala sid il-kera jew amministratur tal-fond 'Santa Maria Court', Flat 4, Triq Alfred Craig, Pieta', bi ksur tal-liġijiet u regolamenti applikabbli, inti nqast li tirreġistra il-kirja tal-imsemmi fond lil Omer Aftab Ahmad I.D. 210668(A) mal-Awtorita' tad-Djar.

Għaldaqstant, il-Qorti hija mitluba bir-rispett tordna lill-ħati, ai termini tal-Artikolu 22(1) tal-Kap 604 tal-Liġijiet ta' Malta, sabiex iħallas il-penali skond il-liġi, għar-raġunijiet hawn fuq speċifikati u cioe' multa ta' mhux iktar minn għaxar t'elef Ewro.

Having seen the documents attached to the charge sheet.

Having seen the minute of the sitting held on the 22nd of June 2022¹ whereby the Court as previously presided ordered that these proceedings continue in the English language.

Having seen the transcript of the testimony given by Inspector Andy Rotin and Omer Aftab Ahmad².

Having seen the evidence of Chris Casha, representative of the Housing Authority³.

Having seen the acts of these proceedings were assigned to this Court as presided on the 17th of May 2023, as per the assignment issued in accordance to Article 11(3) of Chapter 12 of the Laws of Malta and article 520 of Chapter 9 of the Laws of Malta⁴.

¹ At fol 26 of the acts of the proceedings.

² Both held in the sitting of the 22nd of June 2022.

³ Given in the sitting of the 14th of November 2022.

⁴ Exhibited at fol 54A *et seq* of the acts of these proceedings.

Having heard the testimony of the accused of the 21st of June 2023⁵ and the documents exhibited.

Having heard the final submissions of the prosecution and the defence during the sitting held on the 7th of July 2023⁶. The case was then adjourned for judgement.

Having seen all the acts of the case.

Considers

1) Facts

This case concerns the alleged lack of registration of a contract of lease as required by Chapter 604 of the Laws of Malta.

Whereas Omer Aftab Ahmad gave evidence on the 22nd of June 2022. He explains that in June 2020 he vacated the property in question, however he expected the return of the deposit which he had initially paid. The property in question is Santa Maria, Triq Alfred Craig, Pieta, and he identified the accused in court. During cross-examination the accused explained that when the report was filed (September 2020) he was no longer the tenant. He explained that the first contract (dated February 2019) had expired and that there was a new contract signed in January 2020. He reminded the accused that the contract had to be registered. He didn't know that he could have asked for the registration himself. The rest of his

⁵ This commences at fol 56 of the acts of the proceedings.

⁶ At fol 79 of the acts of the proceedings.

testimony revolves around the alleged damages mentioned by the accused as a reason for the withholding of the initial deposit.

Whereas Chris Casha, as representative of the Housing Authority gave evidence during the sitting of the 14th of November 2022. He explains that he is a supervisor within the same Authority and presented various documentation regarding this case. The lessee had been trying to register the agreement, however since this had expired in June 2020 it could not be registered by him at the time. The lessee required the registration so as to proceed with an appropriate civil claim. From the documentation provided it transpires that the accused had in fact registered other lease contracts (on other properties) in the past. He confirms that although the first contract (entered into in the year 2019) was not registerable, this second contract (merits of this case) should have been registered by the accused.

Whereas the accused, in his evidence given on the 21st of June 2023, explains that he had an agreement on the basis of a contract signed on the 1st of February 2019 to lease the premises forming the merits of the case until the end of January 2020. In January 2020 he agreed to sign a new contract for the lease of the same property until June 2020. He states that the first contract was overlapping the previous contract since the original contract had not expired. However, he states the first contract was effective as from the 1st of January 2020. The accused exhibited documentation in this regard, including the correspondence which led to finalisation of the contract. The rest of the evidence revolves around the alleged damage found in the property, which is irrelevant to the lack of registration. In cross-examination, he explains that he didn't know that the second contract should have been registered.

Whereas this Court is of the same opinion as previous judgements regarding the failure of registration of a lease entered into upon the 1st of January 2020 onwards, that is, that this obligation is one of strict liability, without the need to examine the intention of the offender⁷.

Whereas this Court does not share the defence's submission that in this particular case there exists a doubt to warrant the utilisation of the maxim *in dubio pro reo*, given that not all hypotheses are tantamount to the required level of doubt. Naturally, it is no defence for the accused to state that he was not aware of the requirement for such registration.

Whereas irrespective as to whether this contract was for an effective five (5) or six (6) month period, the Court notes that the law does not distinguish or eliminate from its purview the obligation of registration. Any residential contract entered into on the 1st of January 2020 has to be duly registered⁸. Therefore, there is no doubt that this contract ought to have been registered. It transpires, without any doubt that the contract was not so registered.

Whereas finally the contract is within the temporal parameters of the charge as brought against the accused⁹.

2) Punishment

⁷ Reference is here made to the judgement given by this Court, presided by Magistrate Noel Bartolo, in the names **Il-Pulizija vs James Sammut et**, delivered on the 27th of March 2023.

⁸ Article 4(1) of Chapter 604 of the Laws of Malta.

⁹ Reference is made to the judgement given by this Court, presided by then Magistrate Josette Demicoli, in the names **Il-Pulizija vs Sacha Said**, delivered on the 20th of October 2022.

Whereas the law¹⁰ allows for a margin of discretion in imposing the relevant fine (*multa*), which ranges from two thousand and five hundred Euro (€2,500) up to ten thousand (€10,000). In this case particular case, after due deliberation, the Court deems fit to impose this fine at its least quantity.

3) Conclusion

For these reasons, the Court, having seen article 18 of Chapter 9 of the Laws of Malta and articles 3, 4(1), 4(2) and 22(1)(a) of Chapter 604 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him to the payment of a fine (*multa*) of two thousand and five hundred Euro (€2,500).

Dr Joseph Gatt LL.D.
Magistrate

Annalise Spiteri
Deputy Registrar

¹⁰ Article 22 of Chapter 604 of the Laws of Malta